

**WEBB COUNTY
JUVENILE INDIGENT DEFENSE PLAN
(Effective January 2005)**

5.01.01. APPOINTMENT FOR COUNSEL FOR JUVENILES IN DETENTION

- A. All juveniles processed through the Webb County Juvenile Detention Center shall have an attorney appointed to them at the initial detention hearing. The juvenile clerk shall contact an attorney of the appointment before a detention hearing is held. Before the commencement of, but no later than at the conclusion of the juvenile's detention hearing, the juvenile's parents, guardians, or persons responsible, with the assistance of the juvenile detention officer or probation officer, shall submit to the Juvenile Judge or Referee an affidavit of financial status, in the form authorized by the Webb County Juvenile Board or Administrative Board of Judges establishing/attesting to their financial status. Upon receipt of the affidavit, the Juvenile Judge or Referee shall review the affidavit and determine indigency as set out in paragraph 5.10 below.
- B. All juveniles formally charged with the commission of a criminal offense or CINS offense, by the County Attorney shall, with the assistance of the juvenile detention officer, or probation officer, fill out an affidavit of financial status, in the form authorized by the Webb County Juvenile Board or Administrative Board of Judges establishing/attesting to their financial status. Upon receipt of the affidavit, the Juvenile Judge or Referee shall review the affidavit and determine indigency as set out in paragraph 5.10 below.
- C. The Juvenile Court Judge shall, with discretion, make a determination of indigence based on the guidelines to determine indigence set out on Paragraph 5.10. During the arraignment hearing, the County Court Judge may/may not appoint a lawyer or instruct the parents to retain a lawyer for the next setting.

5.02.01. APPOINTMENT OF COUNSEL FOR JUVENILES NOT IN DETENTION

- A. The probation officer shall provide information concerning the appointment of attorneys for juveniles and forms to request court appointment of an attorney to the juvenile and the juvenile's parents during the intake conference. When the Juvenile Department issues its preliminary report to the County Attorney's office, the probation officer shall include any requests for appointment of counsel and any other declarations of indigency or intent to retain private counsel.
- B. Any initial judicial pronouncement declaring a family to be indigent shall be considered presumptive and no further indigency hearings are necessary unless material facts are presented to the Juvenile Court Judge at a later hearing.

- C. When the County Attorney's office files a petition for one or more of the following: CINS, adjudication, discretionary transfer, or motions to modify disposition, the County Clerk's office is instructed to verify each filing to include an order appointing counsel and such to be provided to the corresponding judge for signature. After the appointment is made, the County Clerk shall prepare return of service for all parties including the lawyer before the setting of any juvenile case.

5.03.01 QUALIFICATIONS FOR APPOINTMENTS IN THE JUVENILE COURT

- A. An attorney must be a member in good standing of the State Bar of Texas.
- B. An attorney must reside in Webb County or maintain his/her principal office in Webb County. (A post office address alone will not satisfy this requirement.)
- C. An attorney must have a secretary, receptionist, answering service or a regularly monitored answering machine and must have a fax machine.
- D. An attorney must have the ability to produce typed motions or orders.
- E. An attorney must have on file with the Juvenile Court a completed application for the juvenile public appointment list approved by the Webb County Juvenile Board.
- F. An attorney shall promptly notify the Juvenile Court of any changes to the information contained in the application for the juvenile public appointment list.
- G. An attorney shall promptly notify the Juvenile Court of any matter that would disqualify the attorney from receiving appointments under these guidelines or any other law, regulation or rule.
- H. An attorney shall be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition (Including, but not limited to, issues involving T.Y.C. commitment criteria, use of juvenile adjudications in adult proceedings, license suspension, sex offender registration, school removals and expulsions, sealing of records, etc).

5.03.02 MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS:

- A. An attorney who meets the requirements of this rule may be appointed to represent an indigent juvenile detained for or accused of engaging in delinquent conduct or conduct indicating a need for supervision, if the attorney is otherwise eligible under the plan developed under Section 51.101, Family Code. An

attorney may be appointed under the Appointment of Counsel Plan. An attorney may be appointed under this rule only if the Attorney:

(1) Completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period. The first reporting period will begin on April 1, 2003, (initial period must include April 27, 2003, the effective date of the Task Force on Indigent Defense's rules relating to minimum continuing legal education requirements) and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar of Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing and/or

(2) Is currently certified in juvenile law by the Texas Board of Legal Specialization.

B. REPORTING PERIOD

(i) Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

(ii) Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirements. The carryover provision applies to one year only.

(iii) To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the juvenile continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in juvenile law.

C. EMERGENCY APPOINTMENT

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in juvenile law.

5.04 COUNSEL QUALIFICATION LEVEL

A. CINS AND DELINQUENT CONDUCT PETITIONS WHERE TYC IS NOT AUTHORIZED OPTION

1. An attorney must be licensed to practice law in the State of Texas.
- B. DELINQUENT CONDUCT PETITIONS WHERE TYC IS AN AUTHORIZED OPTION
1. An attorney must have been licensed to practice for one year.
 2. An attorney must have been substantial and active participation in:
 - i. Two juvenile or criminal contested trials, and/or:
 - ii. Five adjudications or modifications (contested or uncontested), or five criminal pleas, or a combination of these
- C. DETERMINATE SENTENCING OR CERTIFICATION PROCEEDINGS
1. An attorney must have been licensed to practice for three years and
 2. An attorney must:
 - i. Be board certified in juvenile or criminal law by the Texas Board of Legal Specialization, or
 - ii. Have substantial and active participation in two felony (juvenile or criminal) jury trials.
- D. APPEALS
1. An attorney must have substantially participated in at least two juvenile, civil or criminal appeals.

5.05 PROCEDURES FOR INCLUSION OF ATTORNEYS ON THE APPOINTMENT LIST

- A. All attorneys are qualified to take CINS and Delinquent Conduct Petitions. An attorney must complete the application form. The form must include a statement declaring that the attorney has demonstrated that he/she meets all qualifications for representation of juveniles at each requested level of appointment.
- B. The attorney must be approved by the majority of the Juvenile Board for inclusion on the appointment list.

5.06 PROCEDURES FOR APPOINTING COUNSEL

- A. The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record.
- B. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
- C. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory.
- D. The juvenile referee/judge may replace an attorney who fails to contact the juvenile on the first working day after the date of appointment or fails to interview the juvenile as soon as practicable.

5.07 DISTRIBUTION OF CASES

- 1. An attorney may receive an appointment for the highest level of offense for which he or she is qualified and for each lower level of offense.
- 2. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.
- 3. Appointments will be made by following a rotation of the names of attorneys and meeting the requirements of Article 26.04(a) CCP

5.08 REMOVAL GROUNDS

- A. GROUND FOR REMOVAL FROM THE JUVENILE PUBLIC APPOINTMENT LIST
 - a. An attorney shall be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:
 - i. conviction or deferred adjudication for any felony, or
 - ii. conviction or deferred adjudication for any crime of moral turpitude, or
 - iii. being under indictment or being formally charged with a felony or crime of moral turpitude, or
 - iv. intentional misrepresentation by the attorney on the application for public appointment
 - b. An attorney may be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:

- i. failing to perform the attorney's duties owed to the juvenile, or
 - ii. a finding by a court that the attorney provided ineffective assistance of counsel, or
 - iii. failing to maintain compliance with each of the juvenile public appointment list guidelines, or
 - iv. if after a hearing it is shown that the attorney submitted a claim for services not performed by the attorney, or
 - v. for good cause at the discretion of the juvenile board.
- c. Removals from the list shall be for a minimum of one year. Removals from the list may be probated. For removals or probated removals, the Juvenile Board may require the completion of rehabilitative measures as a condition of the probation or re-application. For good cause, the Juvenile Board may remove an attorney from the list for a period longer than one year or permanently.
- B. An attorney who was removed from the juvenile appointment list for the reasons stated in Item A, a, i, ii, or iii above may be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted.
- C. An attorney who was removed from the juvenile misdemeanor public appointment list for any reason may apply for reinstatement to the list upon the expiration of one year from the date the attorney was removed from the list unless the Juvenile Board removed the attorney for a longer period of time.

5.09 PROCEDURES FOR REMOVAL OF ATTORNEYS FROM THE APPOINTMENT LIST

- A. The Juvenile Board may remove an attorney from the appointment list if:
 - a. the attorney requests removal from the appointment list, or
 - b. the attorney does not have the qualifications required for appointment, or
 - c. the attorney fails to perform the duties required by the Texas Fair Defense Act, or
 - d. for any of the grounds of removal from the juvenile appointment list included in this plan, or e. for good cause.
- B. An attorney may be temporarily removed from the appointment list by request of the attorney to the juvenile judge provided that the attorney specifically sets out the dates the attorney will not be available to receive appointments.

5.10 DETERMINATION OF INDIGENCY

- A. The income of the juvenile and the child's parent or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies for a court appointed attorney.
- B. A juvenile or a juvenile's parent or other person responsible for the support of the juvenile shall complete a sworn questionnaire and provide supporting documentation if ordered to do so. If a finding of indigency is made, the court shall appoint counsel.
- C. An indigent is any person with a household income at or below 125% of the latest poverty guidelines as established and revised annually by the United States Department of Health and Human Services, and whose liquid assets do not exceed \$15,000.
- D. A juvenile whose household income exceeds 125% of the latest poverty guidelines may still qualify for a court-appointed attorney if the court or its designee determines special circumstances exist, and may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. The court may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases and any efforts the juvenile or the juvenile's family has made to retain an attorney.
- E. Definitions - Terms used to determine eligibility for an indigent's defense shall have the following meanings:

Household income: The juvenile's or the juvenile's parents or other person responsible for support of the child household income shall be defined as the juvenile's income, the juvenile's parents' income and the income of any other person responsible for the support of the child and the income of all other persons related by birth, marriage or adoption who reside with the juvenile. Income shall include the total cash receipts, before taxes, from all resources, including money wages and the net receipts from nonfarm or farm self-employment. Further, income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts, regular payments from social security, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household, or foster care payments, benefits from a government income maintenance program (AFDC, SSI, unemployment compensation, or state or county general assistance or home relief), food or rent received in lieu of

wages, money which is received from tax refunds, gifts, one-time insurance payments or compensation for injury, non-cash benefits (Food Stamps, etc.).

Liquid assets: Liquid assets shall include but are not limited to cash, savings and checking accounts, stocks, bonds, certificates of deposit, equity in real and personal property as well as any interest in retirement accounts.

- F. The guidelines established herein for the appointment herein for the appointment of counsel also apply to the reimbursement of expenses incurred for the purposes of investigation or expert testimony, as approved by the court.

- G. Indigency Chart::

<u>Size of Family Unit</u>	<u>125% of Poverty Level</u>
1.	\$10,738
2	\$14,513
3 .	\$18,288
4	\$22,063
5	\$25,838
6	\$29,613
7	\$33,388
8	\$37,163

For each additional person, add \$3,775.

- H. A juvenile who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or state may move for reconsideration of an indigency determination.

5.11 FORM REQUIRED FOR INDIGENCY

- A. A juvenile, parent or person responsible for the support of the child who requests a determination of indigency and appointment of counsel shall:
- complete under oath a questionnaire concerning financial resources, or
 - respond under oath regarding financial resources, or
 - complete questionnaire and respond to examination.

5.12 FEE SCHEDULE FOR JUVENILE MISDEMEANOR CASES AND DETENTION HEARINGS

Detention Hearing	\$100.00
Arraignments	100.00
Evidentiary Hearings	125.00 (\$250.00 cap)
Out of Court time	100.00 cap
Trial *	400.00 (daily cap)

5.13 FEE SCHEDULE FOR JUVENILE FELONY, MTMD AND CERTIFICATION HEARINGS

Detention Hearing	\$100.00
Arraignments	100.00
Evidentiary Hearings	125.00 (250.00)
Out of Court Time*	100.00 (200.00)
Plea	125.00 (500.00 Certification)
Trial *	600.00 (daily cap)

***Fee amounts subject to change based on Judge's discretion**

5.14 ATTORNEYS FEES

1. Counsel shall receive a payment form from the court for uncontested dispositions.
2. Counsel shall submit a payment request form itemizing services for evidentiary court appearances including jury trials. The form shall itemize the services provided and the dates of the services. The form shall set out separately the total time spent out of court and the total time spent in court representing the juvenile. Counsel shall provide copies of docket sheets with the requisition.
3. If the judge disapproves the requested amount, the judge shall make written findings stating reason for approving an amount different from the requested amount.
4. An attorney may appeal disapproval of attorney fees to the presiding judge of the administrative judicial region.
5. The commissioners court shall pay the appointed counsel the amount approved by the presiding judge of the administrative judicial region that is in accordance with

the fee schedule not later than 45 days after the date of an application for payment.

6. Any attorney who fails to submit a request for payment after 60 days from the date that the case has been resolved shall not be able to file any late requests for payments, unless approved by the juvenile court judge after good cause has been shown.

This Juvenile Indigent Defense Plan was adopted by unanimous vote of the Board of Judges of Webb County, Texas.

Signed this 16th day of December, 2004

Ben Morales, Juvenile Board Chairman
Judge, County Court at Law I

